



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R08-OAR-2020-0516; FRL-10020-22-Region 8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; South Dakota; Control of Emissions from Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a Clean Air Act (CAA or the “Act”) section 111(d) state plan submitted by the South Dakota Department of Environment and Natural Resources (DENR or the “Department”) on January 3, 2020. This plan was submitted to fulfill the requirements of the CAA and is responsive to the EPA’s promulgation of Emission Guidelines and Compliance Times (EG) for existing municipal solid waste (MSW) landfills. The South Dakota state plan establishes performance standards and operating requirements for existing MSW landfills within the State of South Dakota and provides for the implementation and enforcement of those standards and requirements by the Department. The EPA is taking this action pursuant to requirements of the CAA.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2020-0516. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard

copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Gregory Lohrke, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-TRM, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6396, lohrke.gregory@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our October 29, 2020 proposed rule (85 FR 68538). In that document we proposed to approve the South Dakota state plan for existing MSW landfills as it was submitted by the Secretary of the South Dakota DENR on January 3, 2020. Analysis of the South Dakota state plan may be found in the aforementioned proposed rule and the technical support document (TSD) associated with the docket for today’s action.

We received comments from one commenter during the public comment period opened by the proposed rule. Our response to the comments is addressed in Section II. below.

II. Response to Comments

The proposed rule published in the *Federal Register* at 85 FR 68538 received comments on Sections I and II of the preamble of that publication. The comments relevant to today’s action are summarized here with the corresponding Agency response.

Comment: On Section I of the preamble of the proposed rule, the commenter broadly questioned the efficacy of both implementing the standards and requirements of “outdated” EG finalized in 2016, and the promulgation of two separate and distinct emission standards- one for new and another for existing facilities within the same source category.

Response: The EPA is not statutorily obligated to conduct review and revision of EG for existing sources but maintains the discretion to do so when appropriate. Changes in best practices and cost effectiveness of available technology within the MSW landfill industry since the original EG for MSW landfills were promulgated in 1996 prompted the Agency to review those standards and requirements. The review of the 1996 EG allowed EPA to find that a rule revision was appropriate and would increase potential for emission reductions at MSW landfills as well as streamline implementation of requirements and standards for landfill owners and operators. Although the standards and requirements promulgated in 2016 are over four years old at this point, these major revisions to the EG for MSW landfills are relatively new and reflect the accumulation of industry developments over a timeframe of 20 years. The EPA is neither statutorily obligated, nor capable, of revising EG at a pace faster than the development of new, practical control technologies or best practices in emission reductions. Rather, the Agency is constrained in its revision of EG by the realities of what best system of emissions reduction is available to the regulated population, while taking into account the cost and other limiting factors affecting implementation of such a system of reductions at designated facilities.

The EPA differentiates regulations for new and existing facilities of the same source category under a similar logic. CAA section 111 authorizes the EPA to develop new source performance standards (NSPS) and emission guidelines for existing sources (EG). This distinction in performance standards for different source populations acknowledges the reality that the best system of emission reduction reasonably available to newer and older facilities may be different when considering cost and practicability of implementation.

Comment: The commenter desired a more in-depth review of the regulated facilities and the state plan submittal.

Response: The requested information is available in associated documents found in the docket for the proposed rule and today's action. The docket, including these supporting documents, is reviewable through <http://www.regulations.gov>.

This concludes our response to the comments received. No changes have been made to the proposed rule as a result of the comments.

III. Final Action

The EPA is finalizing approval of the South Dakota section 111(d) state plan for existing MSW landfills, submitted by the South Dakota DENR on January 3, 2020, pursuant to 40 CFR part 60, subparts B, Ba, and Cf. Therefore, the EPA is amending 40 CFR part 62, subpart QQ to reflect this approval action. This approval is based on the rationale provided in section II of the proposed rule for this action (86 FR 68539) and discussed in detail in the TSD associated with this rulemaking action.¹ The scope of this approval is limited to the provisions of 40 CFR parts 60 and 62. The EPA's proposed approval of the South Dakota plan is limited to those landfills that meet the criteria established in 40 CFR part 60, subpart Cf.

The EPA Administrator continues to retain authority for approval of alternative methods to determine the nonmethane organic compound concentration or a site-specific methane generation rate constant (k), as stipulated in 40 CFR 60.30f(c).

IV. Incorporation by Reference

In accordance with the requirements of 1 CFR 51.5, we are finalizing regulatory text that includes the incorporation by reference of section 74:36:01:19 and sections 74:36:07:94 – 145 of the Administrative Rules of South Dakota (ARSD) as effective on November 25, 2019 which are part of the CAA section 111(d) state plan applicable to existing MSW landfills in South Dakota. The regulatory provisions of these sections of the ARSD incorporate the required 111(d) state plan elements required by the EG for existing MSW landfills promulgated found at 40 CFR part 60, subpart Cf and establish emission standards and compliance times for the control of methane and other organic compounds from certain MSW landfills that commenced construction, modification, or reconstruction on or before July 17, 2014. The emissions standards and compliance times established within these ARSD sections and the South Dakota state plan are at

¹ EPA Document ID No. EPA-R08-OAR-2020-0516-0004, available at www.regulations.gov.

least as stringent as those required by the EG for existing MSW landfills. The EPA has made, and will continue to make, ARSD sections 74:36:01:19 and 74:36:07:94 – 145 (as well as the South Dakota 111(d) state plan document for existing MSW landfills) generally available electronically through www.regulations.gov, Docket No. EPA-R06-OAR-2020-0516 and in hard copy at the EPA Region 8 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). This incorporation by reference has been approved by the Office of the Federal Register and the Plans are federally enforceable under the CAA as of the effective date of this final rulemaking.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve section 111(d) state plan submissions that comply with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 40 CFR part 60, subparts B and Cf; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d) state plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the CAA section 111(d) Plans are not approved to apply in Indian country, as defined at 18 U.S.C. 1151, located in the state. As such, this rule does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), and it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after

it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Landfills, Methane, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 23, 2021.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

40 CFR part 62 is amended as follows:

**PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR
DESIGNATED FACILITIES AND POLLUTANTS**

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart QQ—South Dakota

2. Revise §§62.10350, 62.10351, and 62.10352 to read as follows:

§62.10350 Identification of plan.

Section 111(d) State Plan for Existing Municipal Solid Waste Landfills and the associated State regulations contained in the Administrative Rules of South Dakota (ARSD) at 74:36:01:19 and 74:36:07:94 – 145 ARSD (incorporated by reference, see §62.10353), submitted by the State on January 3, 2020.

§62.10351 Identification of sources.

The plan applies to all existing municipal solid waste landfills under the jurisdiction of the South Dakota Department of Environment and Natural Resources for which construction, reconstruction, or modification was commenced on or before July 17, 2014, and are subject to the requirements of 40 CFR part 60, subpart Cf.

§62.10352 Effective date.

The effective date of the plan for existing municipal solid waste landfills is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

3. Add §62.10353 to read as follows:

§62.10353 Incorporation by reference.

(a) The material incorporated by reference in this subpart was approved by the Director of the Federal Register Office in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material may be inspected or obtained from the EPA Region 8 office, 1595 Wynkoop Street, Denver, CO 80202-1129, 303-312-6312 or from the other sources listed in this section. It may also be

inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

(b) State of South Dakota, Legislative Research Council, 5007, 500 E Capitol Ave #3, Pierre, SD 57501, (605) 773-3251, <https://rules.sd.gov/>; Administrative Rules of South Dakota (ARSD).

Title 74 South Dakota Department of Environment and Natural Resources:

(1) 74:36:01:19 ARSD, Article 74:36 – Air Pollution Control Program, Chapter 01 – Definitions, Section 19 – Existing municipal solid waste landfill defined, effective November 25, 2019.

(2) 74:36:07:94 through 145 ARSD, Article 74:36 – Air Pollution Control Program, Chapter 07 – New Source Performance Standards, Sections 94 through 145, effective November 25, 2019.

[FR Doc. 2021-06360 Filed: 3/29/2021 8:45 am; Publication Date: 3/30/2021]